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July 5, 2024

**VIA ECF**

Hon. Jennifer L. Rochon  
United States District Judge  
Southern District of New York  
500 Pearl Street, Room 1920  
New York, NY 10007

Re: FTC v. Tapestry, Inc., et al. No. 1:24-cv-03109-JLR  
July 9, 2024 Conference Concerning Tapestry, Inc.'s Subpoena to Cole Haan LLC

Dear Judge Rochon:

We write on behalf of non-party Cole Haan LLC (“Cole Haan”), in response to Tapestry, Inc.’s (“Tapestry”) “letter motion” to compel (“Motion”)<sup>1</sup>. As served, Tapestry’s subpoena requested 15 categories of documents. Cole Haan timely objected, and Tapestry conceded the merit of Cole Haan’s objections in purporting to reformulate several of the requests. However, Tapestry’s reframing of the 15 original requests to the current 4 requests still does not provide adequate protection to Cole Haan under F.R.C.P. 45. Tapestry also has failed to in any way address Cole Haan’s objections as to burdensomeness and confidentiality. Cole Haan’s objections to the subpoena should be sustained.

Tapestry’s subpoena included 15 requests for documents about: competition in the handbag market (RFPs 1, 2, and 13); the results of any consumer studies on purchasing habits (RFPs 3, 4, and 9); Cole Haan’s discounting strategy (RFP 5), sales data including units sold, and revenue by sales channel (RFPs 6, 7, 8, 10, and 12); Cole Haan’s employees (RFP 11); information exchanged with the FTC relating to the proposed acquisition (RFP 14); Cole Haan’s handbags and manufacturing information (RFP 15). Cole Haan objected that the requests were unduly burdensome and required the production of highly confidential business information inadequately protected by the protective order.

#### **I. It is Tapestry’s Responsibility to Avoid Imposing an Undue Burden.**

The Federal Rules require Tapestry to avoid imposing an undue burden on Cole Haan. Fed. R. Civ. P. 45(d)(1) (“A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.”). Tapestry acknowledged the validity of Cole Haan’s objections and agreed to “narrow” its discovery requests on June 4, demonstrating that the original subpoena was improper.

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<sup>1</sup> Local Rule 37.2 requires the moving party to first request an informal conference with the Court for a pre-motion discovery conference. Tapestry’s “letter motion” seemingly demands to forego the required conference and proceed directly to a motion to compel, depriving Cole Haan of due process and a fair opportunity to fully respond to the issues. Cole Haan respectfully requests that Tapestry’s Motion be treated as a request for a pre-motion conference.

Hon. Jennifer L. Rochon  
July 5, 2024  
Page 2

However, Tapestry has not actually narrowed its requests and fails to avoid imposing an undue burden on Cole Haan. Instead, Tapestry has merely reframed the requests without addressing Cole Haan's burden and confidentiality concerns. For example, Tapestry's final and allegedly narrowed Request 3 seeks "the results of *any* formal assessment of competition" for Cole Haan handbags. This does not differ from the original requests 1, 2, or 13 (Subpoena ECF 110-2 at 4, 8). Even as reframed, producing documents responsive to these requests would still be an undue burden to Cole Haan. With Tapestry's definition of "Handbag" including bags such as backpacks, duffel bags, and business bags (Subpoena ECF 110-2 at 15), and despite Cole Haan's small sales volume relative to the Defendants and other subpoenaed parties, Cole Haan will need to evaluate at least 97 handbags to comply with Tapestry's requests and provide over four years of sales information for those bags and others sold during that period. Ex. A (Cole Haan website). Tapestry does not dispute that Cole Haan would have to evaluate over 70 handbags. Motion at 2. Further, the final requests maintain the demands for confidential sales data that is not adequately protected by the protective order.

Tapestry's Motion fails to provide any legal support to permit such onerous and burdensome discovery requests. For example, Tapestry relies on *Freydl v. Meringolo*, 2011 WL 2566087, at \*3 (S.D.N.Y. June 16, 2011) to claim that Cole Haan's refusal to produce documents is "a paradigm of discovery abuse," but *Freydl* is inapplicable because it does not involve a subpoena under Rule 45. Cole Haan is not a party to this action. Tellingly, rather than seek to avoid imposing an undue burden, Tapestry has done exactly the opposite; purporting to file a motion to compel by letter and demanding a response within just 2 days despite an impending holiday, and an ability to seek relief at least a week earlier, if not several weeks earlier.

## **II. Cole Haan's Confidential Information can be shared with Cole Haan competitors.**

Tapestry's motion to compel should be denied because it seeks highly confidential information which the protective order fails to adequately protect. Rule 45 contemplates protecting a non-party when the subpoena requests confidential information. Fed. R. Civ. P. 45(d)(3)(B)(i). Protecting the non-party includes precluding discovery when the protective order does not adequately protect the non-party. *Insulate Am. v. Masco Corp.*, 227 F.R.D. 427, 434 (W.D.N.C. 2005).

In *Insulate*, the Defendants issued a subpoena to a non-party seeking documents that contained confidential information. *Id.* at 433. The Defendants were competitors to the non-party, to which the court noted that "disclosure to a competitor is more harmful than disclosure to a non-competitor." *Id.* The Defendants argued that the protective order adequately protected the non-party. *Id.* at 434. However, the court recognized that there was a question as to whether the protective order adequately protected the non-party's confidential information. *Id.* After balancing the relevant interests, the court quashed the discovery requests. *Id.*

Here, the protective order does not adequately protect Cole Haan's confidential information. The protective order allows sharing confidential material with any expert who is not an employee of a Defendant and has signed Exhibit A thereto. Protective Order, ECF 70 ¶ 7. The protective order, therefore, allows disclosure of Cole Haan's designated confidential information to a competitor of Cole Haan who is retained as an expert in this case and has signed Exhibit A.

Hon. Jennifer L. Rochon

July 5, 2024

Page 3

The parties are not required to notify Cole Haan nor is there a meaningful way for Cole Haan to prohibit the disclosure. While Tapestry has represented it will not share Cole Haan's confidential information with a retained expert that is a competitor to Cole Haan (Exhibit E to Motion, ECF 110-5 at 4), Cole Haan should have the exclusive right to determine the appropriate disclosure of its confidential information. Further, the FTC is not bound by Tapestry's representation, and thus Cole Haan's confidential information would be unprotected and easily shared in the marketplace. Tapestry has not made any effort to avoid imposing an undue burden on Cole Haan.

**III. Tapestry acknowledges receipt of information from much of the industry and does not explain why Cole Haan's information is not cumulative.**

A court must limit discovery if "the discovery sought is unreasonably cumulative or duplicative." Fed. R. Civ. P. 26(b)(2)(c); *see also Tucker v. Am. Intern'l Group, Inc.*, 281 F.R.D. 85 (D. Conn. 2012). In *Tucker*, the Court considered that the party issuing the subpoena had already "obtained extensive discovery . . . from other sources" and denied the party's motion to compel. *Tucker*, 281 F.R.D. at 95. *See also Haber v. ASN 50th St., LLC*, 272 F.R.D. 377, 382 (S.D.N.Y. 2011) (quashing the subpoena served on the CEO of Defendant because the request was duplicative of prior requests to which the requester had already received responses). Tapestry's motion to compel should further be denied because it seeks information that would be cumulative in purpose to information Tapestry has received from other third-parties. Indeed, Tapestry admits that it has made the same four requests and received responsive documents from more than 80 non-parties. Motion at 1.<sup>2</sup>

Cole Haan is a modest participant in the handbag market, and its sales are insignificant compared to the information provided by the other 80 entities. Tapestry has not provided an explanation for needing more information and certainly not one that outweighs the burden and potential harm to Cole Haan in responding. The FTC appears to be satisfied with these more than eighty prior requests as the FTC has not indicated any intent to move to compel information from Cole Haan.

Respectfully Submitted,

By: /s/ Stephen J. Grable  
**THOMPSON COBURN LLP**

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 New York, NY 10022  
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*Attorneys for non-party Cole Haan LLC*

cc: All Counsel of Record (via ECF)

Enclosure: Ex. A, Cole Haan website – Bags and Accessories page

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<sup>2</sup> Tapestry suggests that Cole Haan should have to produce documents because more than 80 non-parties have responded. The actions of the other parties are not binding on Cole Haan and are not relevant to Cole Haan's legal obligations.

# EXHIBIT A

COLE HAAN



SEARCH

Bags & Accessories



[BEST SELLERS](#)



[WORK & TRAVEL BAGS](#)



[LEATHER BAGS](#)



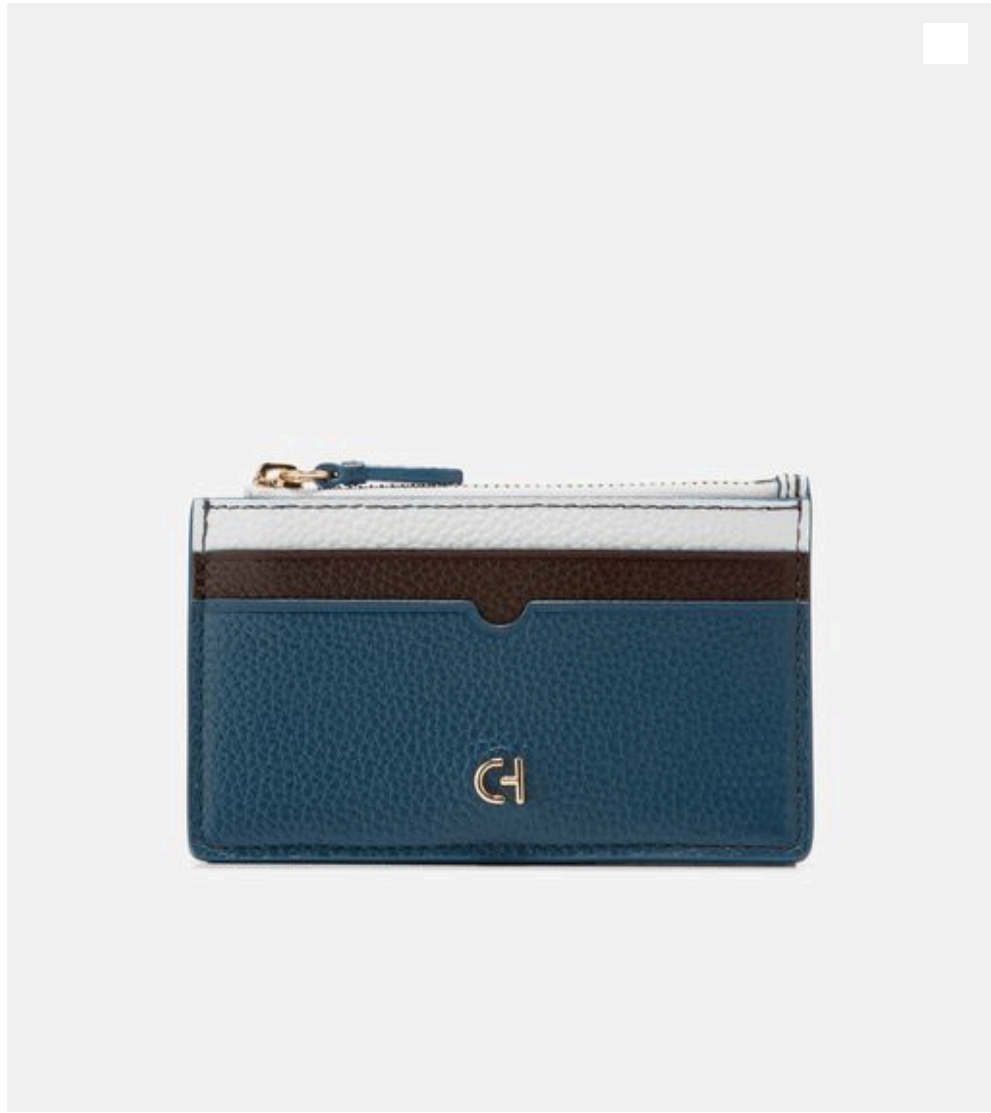
[MEN'S BAGS](#)



[WOMEN'S HANDBAGS](#)

97 PRODUCTS

[FILTER](#) 8



Essential Zip Card Case

~~\$68.00~~ \$39.95

Extra 20% Off | Code SUMMER



Card Case With Zip

~~\$68.00~~ \$49.95

Extra 20% Off | Code SUMMER

GET 15% OFF

Feedback







GRANDSERIES Card Case with Zip

~~\$68.00~~ **\$49.95**

Extra 20% Off | Code SUMMER

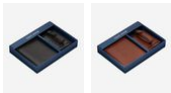


Go Anywhere Case

~~\$88.00~~ **\$59.95**

4th of July Event | Prices as Marked





Passport Case with Luggage Tag

~~\$128.00~~ **\$59.97**

4th of July Event | Prices as Marked



Passport Case with Luggage Tag

~~\$128.00~~ **\$59.97**

4th of July Event | Prices as Marked



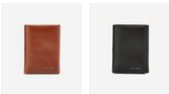
GRANDSERIES Card Case with Zip

**\$68.00**



Boxshine Trifold Wallet

~~\$88.00~~ **\$69.95**



Boxshine Trifold Wallet  
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Essential Wallet Gift Set  
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4th of July Event | Prices as Marked

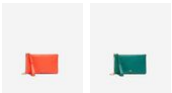






Boxshine Extra Capacity Wallet

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Essential Pouch

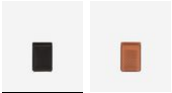
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Extra 20% Off | Code SUMMER



Boxshine Extra Capacity Wallet

~~\$98.00~~ \$74.95



Washington Perforated Card Case

\$78.00

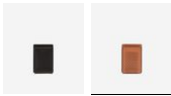


Boxshine Magnetic Wallet  
\$78.00



Boxshine Magnetic Wallet  
\$78.00





Washington Perforated Card Case  
\$78.00



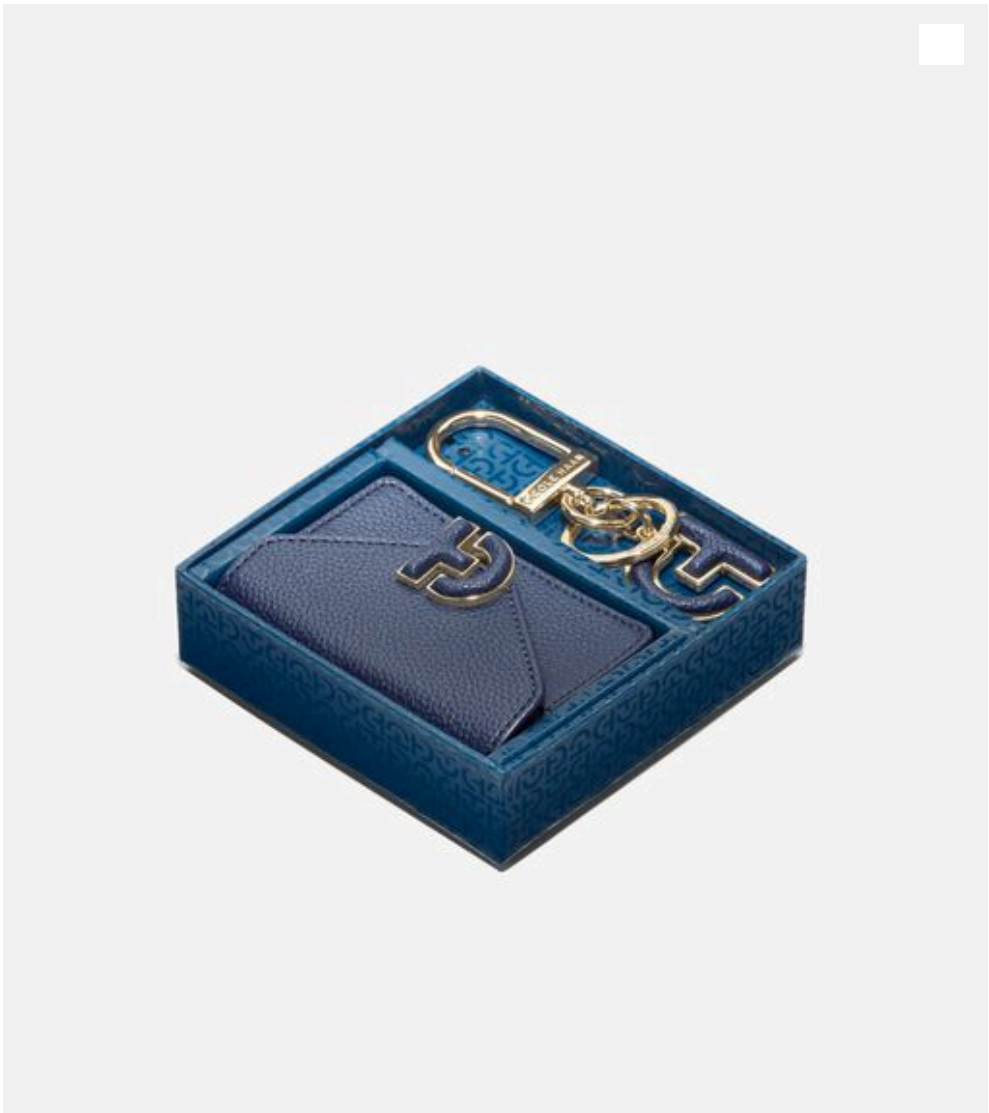
Go Anywhere Case  
\$88.00



Field Day Sling Bag  
~~\$148.00~~ **\$89.97**  
4th of July Event | Prices as Marked



ZERØGRAND Dopp Kit  
\$98.00



Go Anywhere Wristlet  
~~\$138.00~~ **\$99.95**  
Extra 20% Off | Code SUMMER



Town Card Case Gift Set  
~~\$158.00~~ **\$99.95**  
4th of July Event | Prices as Marked



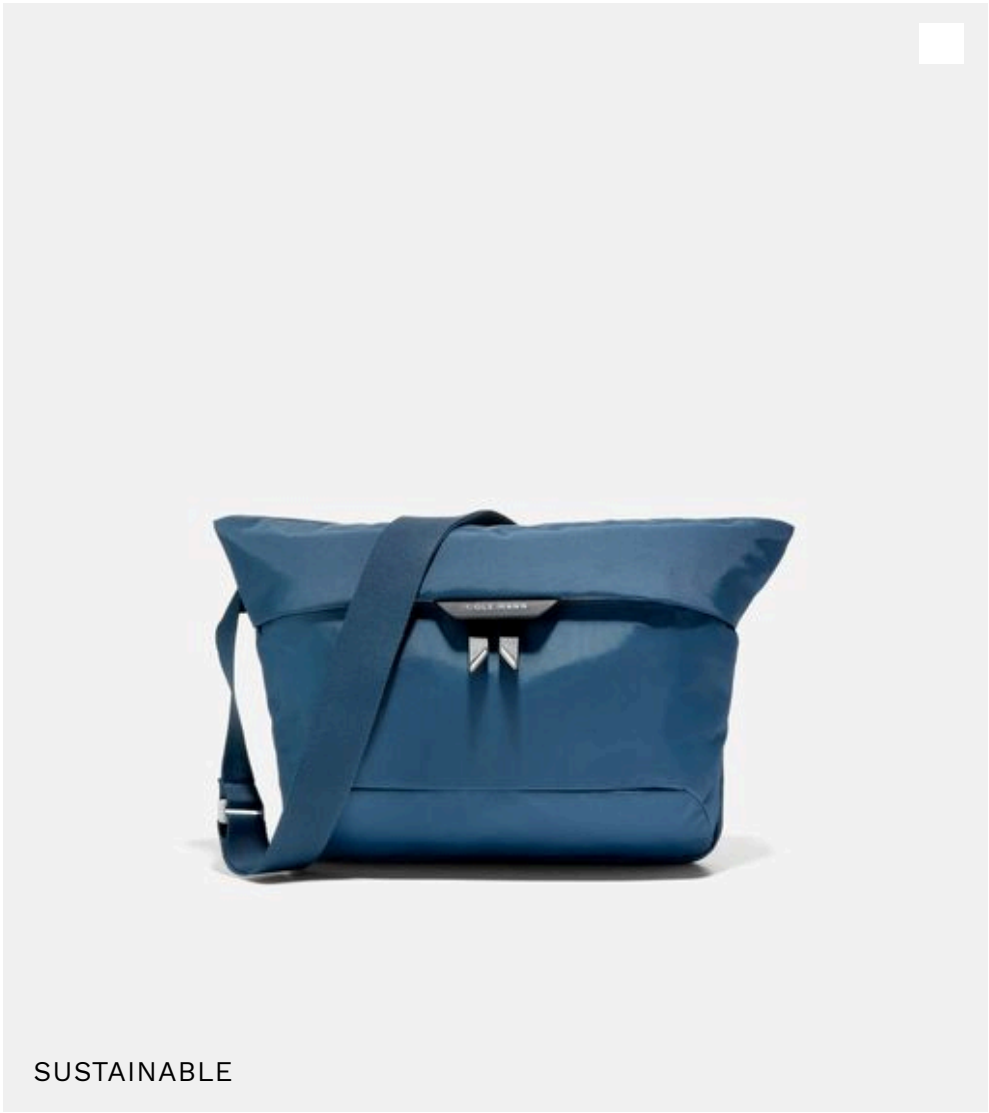




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Go Anywhere Wristlet  
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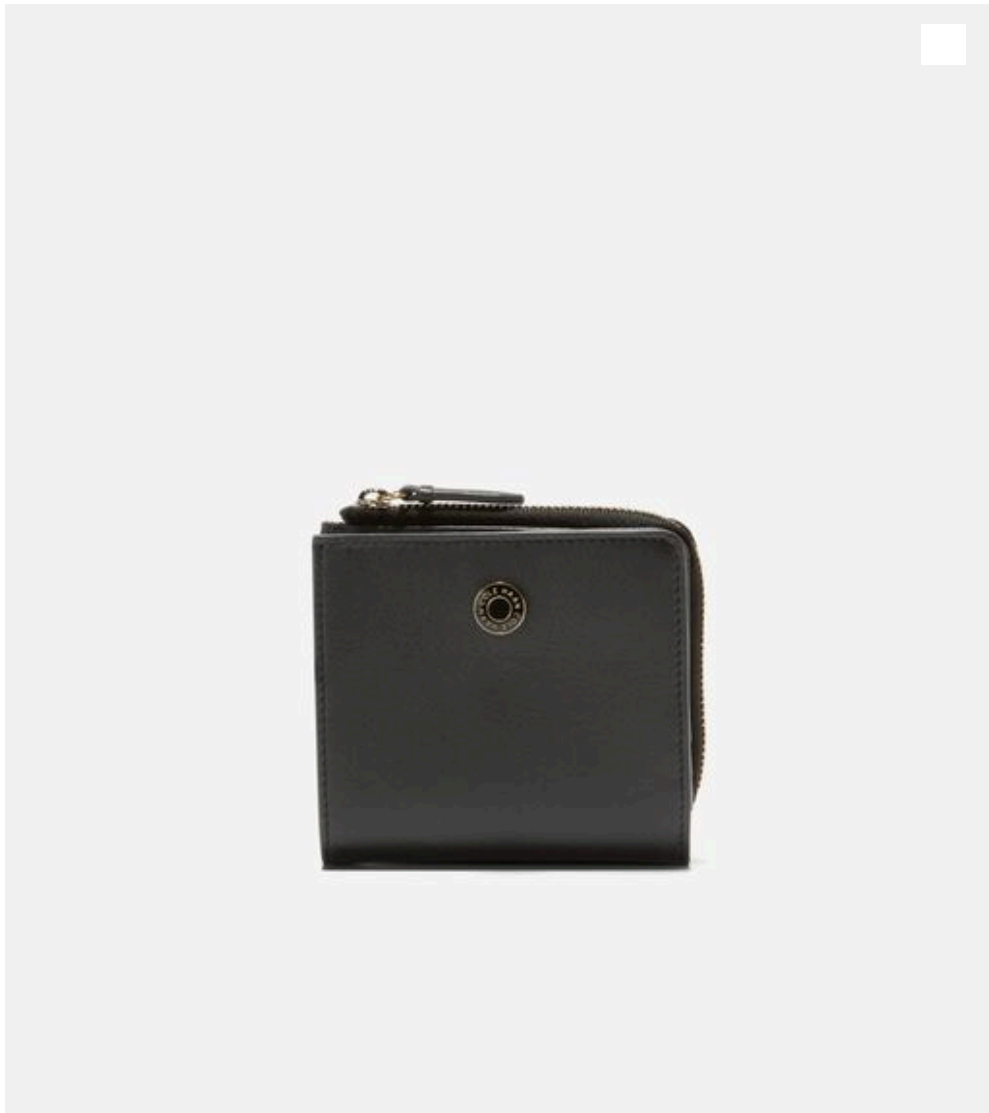
SUSTAINABLE



All-In-One Flap Crossbody Bag  
~~\$148.00~~ **\$114.95**  
Extra 20% Off | Code SUMMER



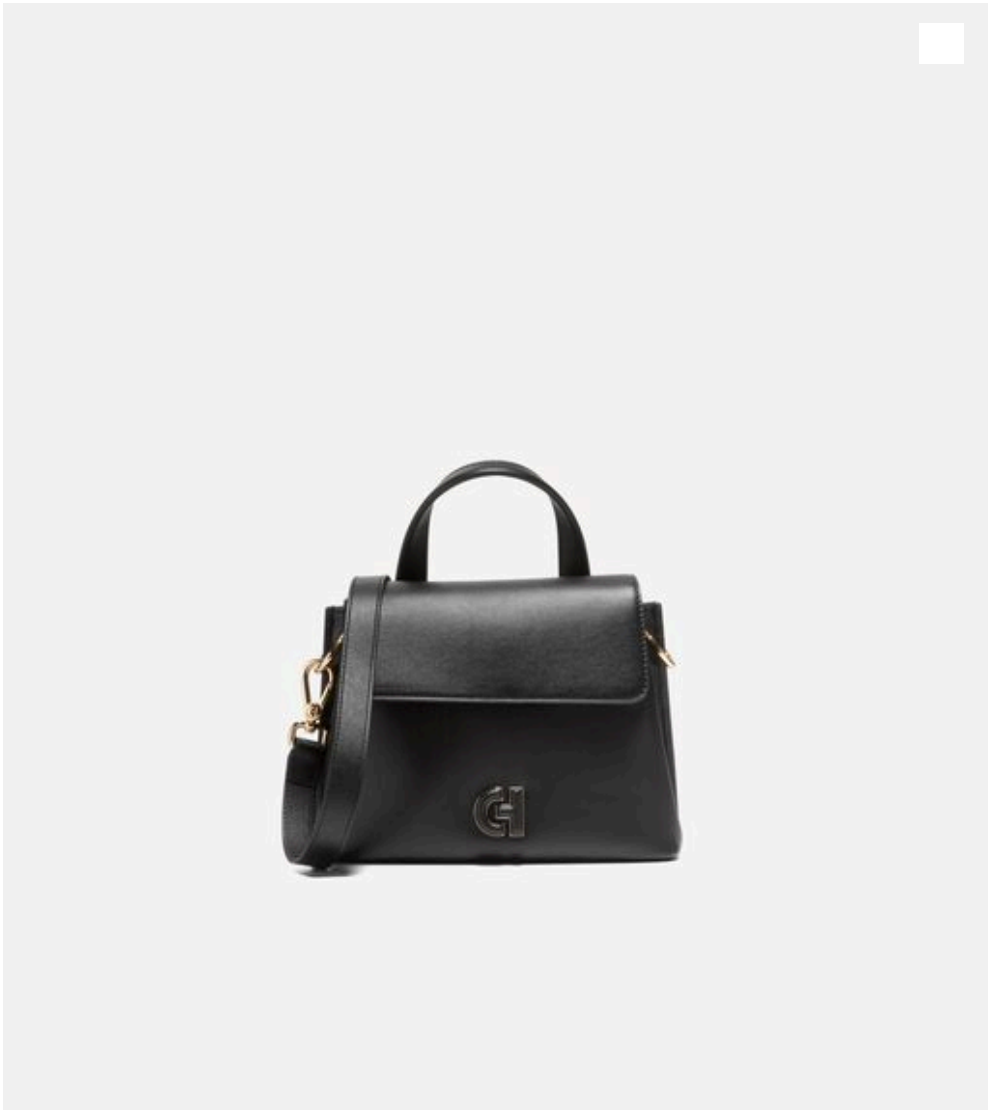
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Extra 20% Off | Code SUMMER



Vartan Card Case  
\$118.00



Vartan Card Case  
\$118.00





Oversized Closure Phone Case

~~\$178.00~~ **\$139.95**

Extra 20% Off | Code SUMMER



Mini Collective Satchel

~~\$288.00~~ **\$139.95**

Extra 20% Off | Code SUMMER



Grand Ambition Small Convertible Luxe Backpack

~~\$278.00~~ **\$139.95**

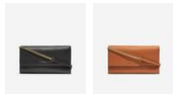
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Go Anywhere Tote Bag

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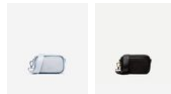
4th of July Event | Prices as Marked



Wallet on a Chain  
\$148.00



BEST SELLER



Neoprene Transit Bag  
\$148.00



BEST SELLER



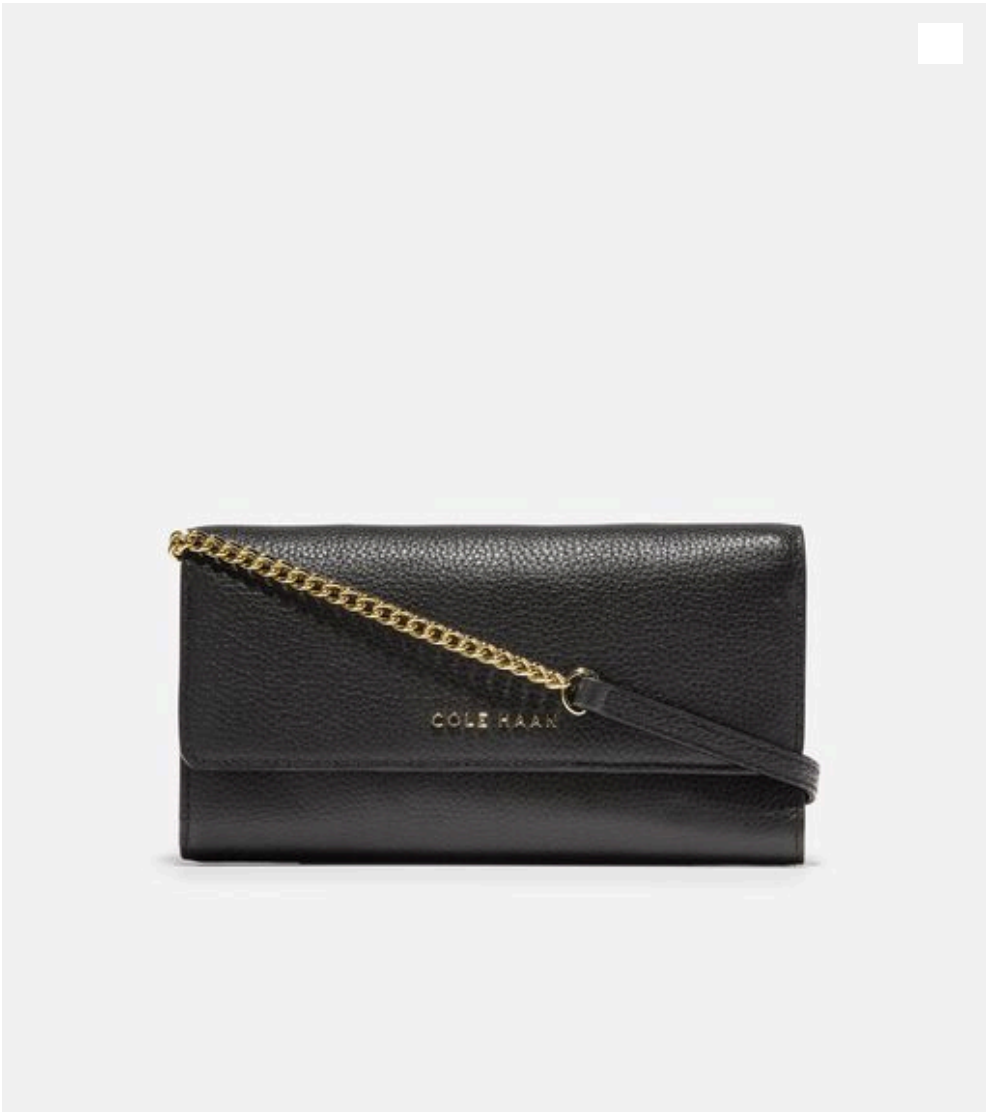




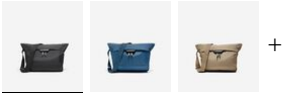
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All-In-One Flap Crossbody Bag  
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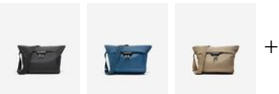
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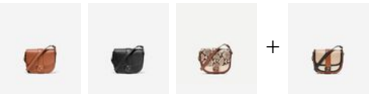
Field Day Sling Bag  
\$148.00



NEW ARRIVAL



Field Day Sling Bag  
\$148.00



Essential Mini Saddle  
~~\$258.00~~ \$149.95





Mini Shoulder Bag

~~\$248.00~~ **\$149.95**

Extra 20% Off | Code SUMMER



Town Card Case Gift Set

**\$158.00**



Grand Ambition Convertible Luxe Backpack

~~\$328.00~~ **\$159.95**

Extra 20% Off | Code SUMMER



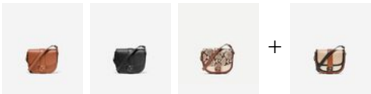
Grand Ambition Small Convertible Luxe Backpack

~~\$278.00~~ **\$159.95**

Extra 20% Off | Code SUMMER



Kamila Hobo Bag  
~~\$298.00~~ **\$169.95**  
Extra 20% Off | Code SUMMER



Essential Mini Saddle Bag  
~~\$258.00~~ **\$169.95**  
Extra 20% Off | Code SUMMER







Oversized Closure Phone Case  
\$178.00

Date Night Clutch  
~~\$248.00~~ \$179.95  
Extra 20% Off | Code SUMMER



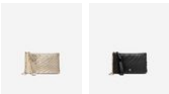
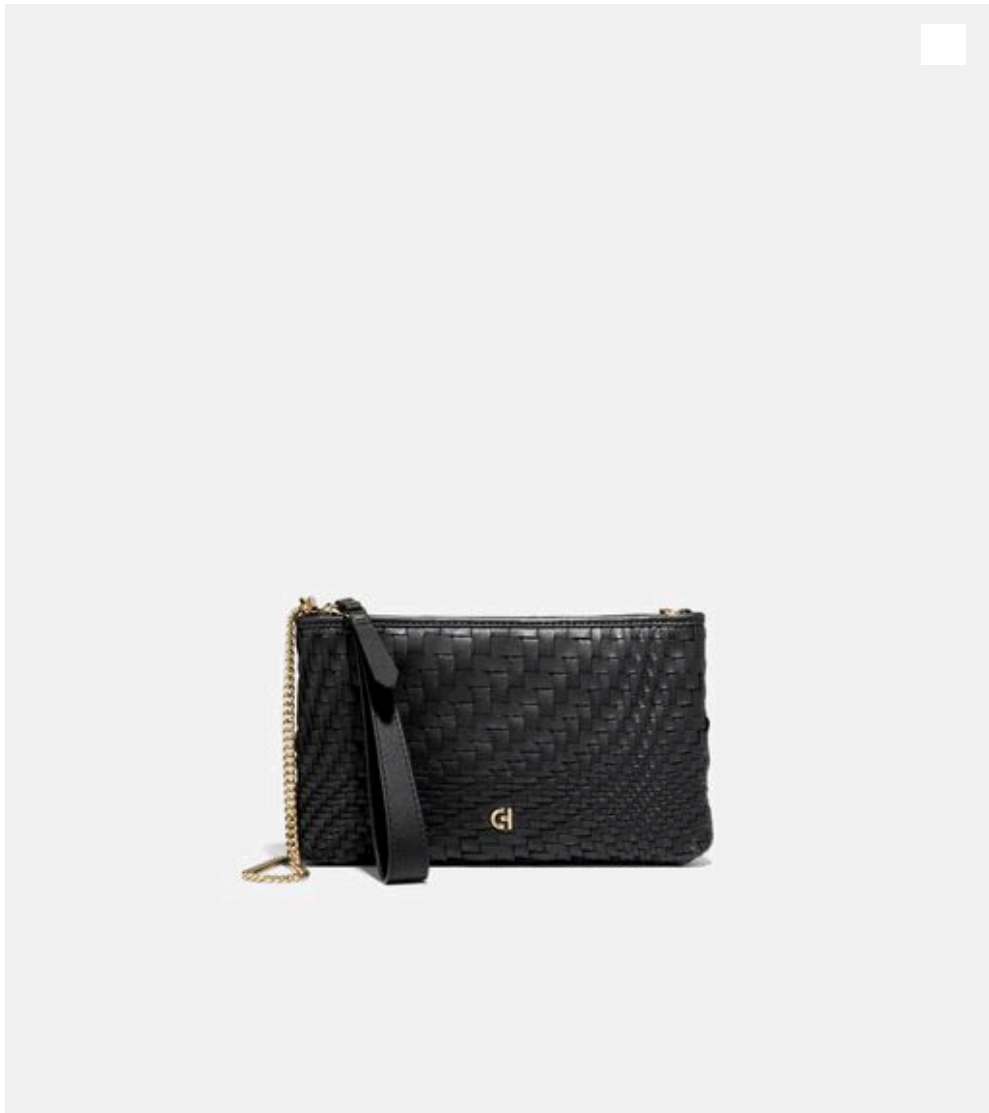
SUSTAINABLE



Grand Ambition Small Convertible Luxe Backpack  
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Extra 20% Off | Code SUMMER



Grand Ambition Neoprene Backpack  
~~\$248.00~~ \$189.95  
Extra 20% Off | Code SUMMER



Essential Pouch  
\$198.00



BEST SELLER



Go Anywhere Tote Bag  
\$198.00



BEST SELLER



BEST SELLER

Classic Straw Tote Bag

\$198.00



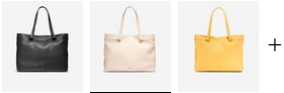
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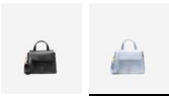
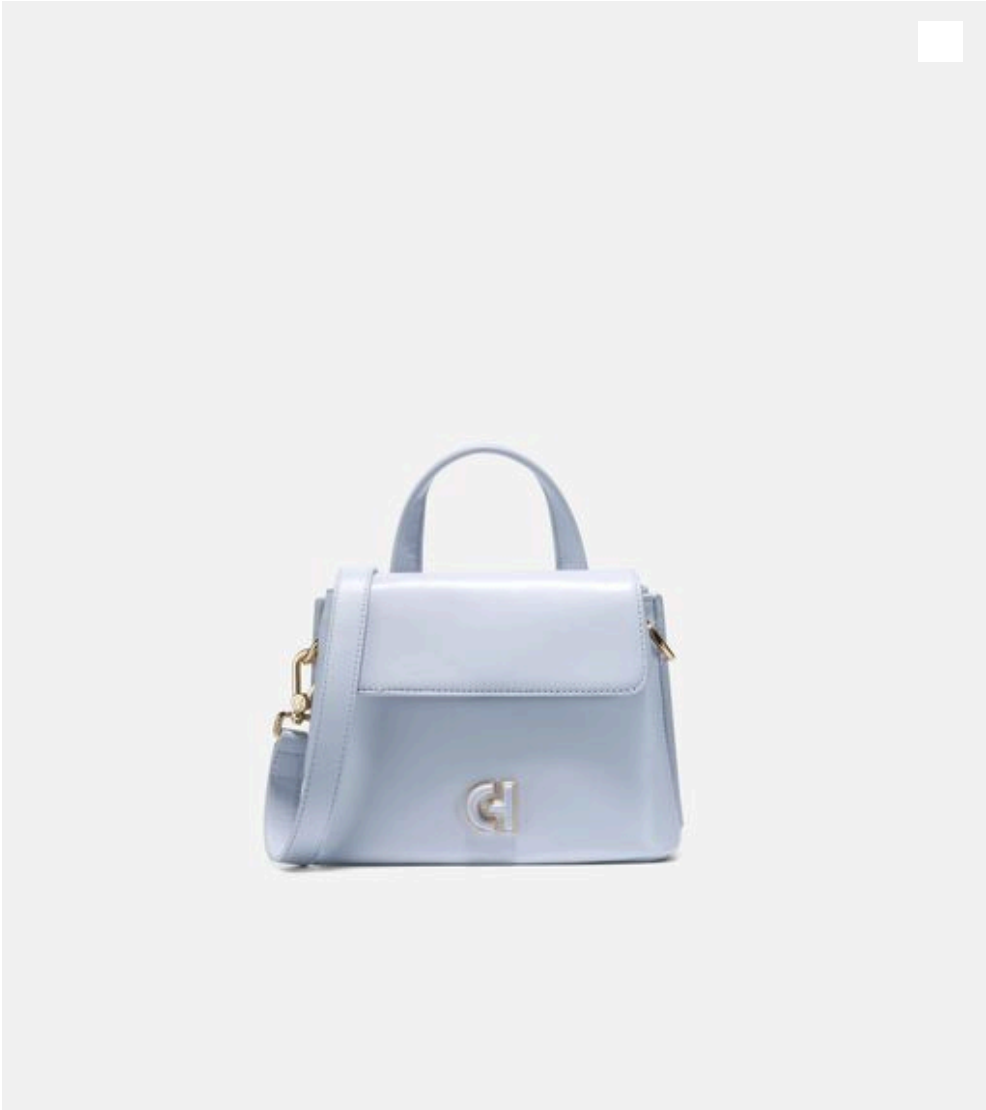
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\$198.00



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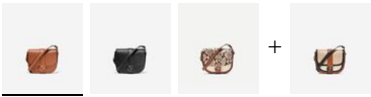
~~\$268.00~~ \$199.95



Mini Collective Satchel

~~\$288.00~~ **\$199.95**

4th of July Event | Prices as Marked



Essential Mini Saddle Bag

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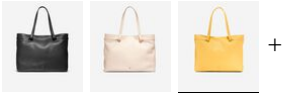


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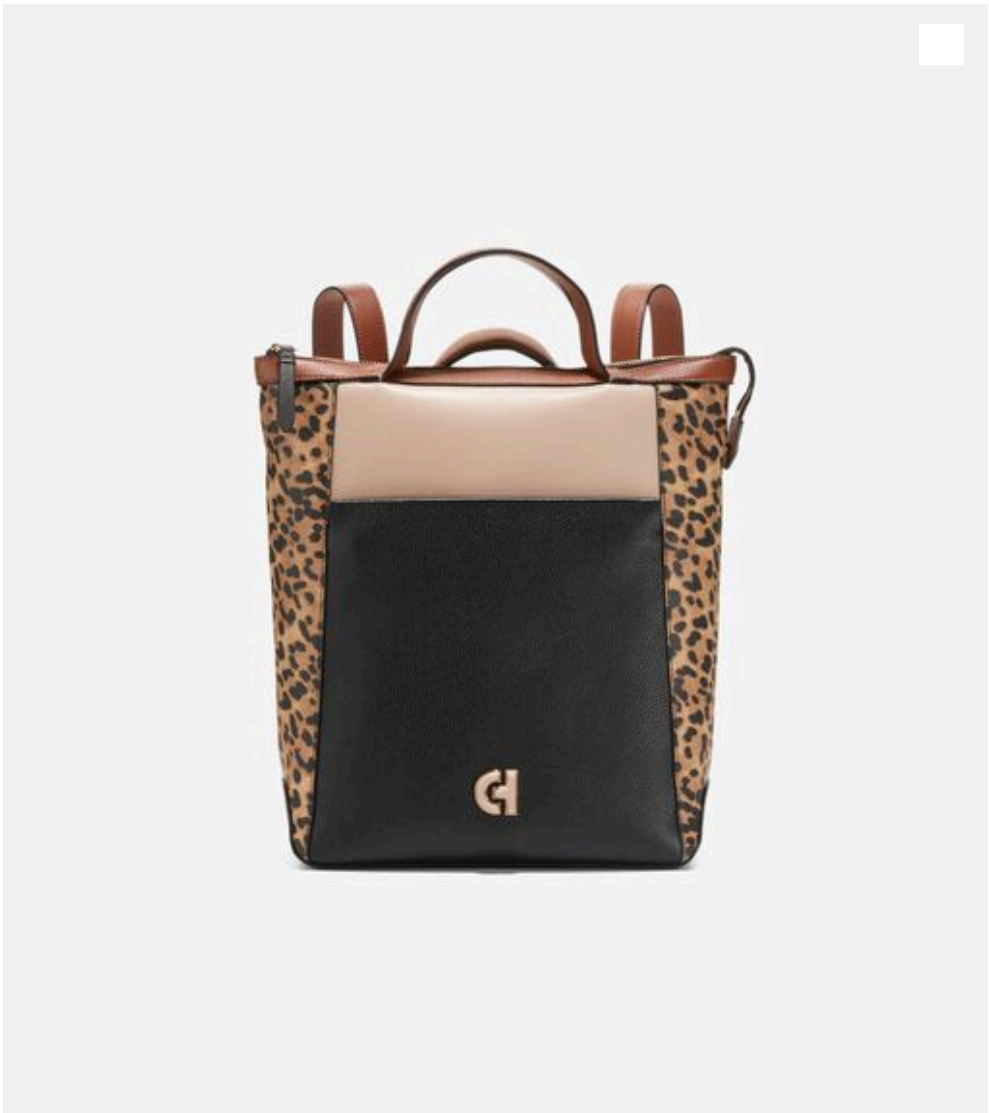
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Extra 20% Off | Code SUMMER



Essential Soft Bucket Bag  
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4th of July Event | Prices as Marked



Essential Soft Tote Bag  
~~\$268.00~~ \$199.95  
Extra 20% Off | Code SUMMER



Essential Soft Bucket Bag

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Extra 20% Off | Code SUMMER



Grand Ambition Small Convertible Luxe Backpack

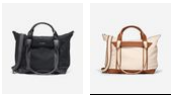
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Extra 20% Off | Code SUMMER



Men's ZERØGRAND Attache

\$228.00



Total Tote

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Extra 20% Off | Code SUMMER



BEST SELLER



Mini Shoulder Bag

~~\$248.00~~ \$238.00

Mini Shoulder Bag

\$248.00



Mini Shoulder Bag  
\$248.00



Mini Shoulder Bag  
\$248.00



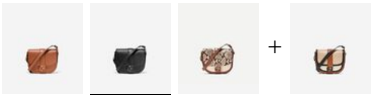
BEST SELLER



BEST SELLER



Grand Ambition Neoprene Backpack  
\$248.00



Essential Mini Saddle Bag  
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Mini Day-To-Night Bag  
\$258.00



Essential Soft Bucket Bag  
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Extra 20% Off | Code SUMMER





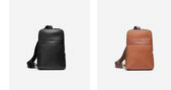
BEST SELLER



Grand Ambition Convertible Backpack

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Extra 20% Off | Code SUMMER



Triboro Sling Bag

**\$268.00**



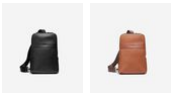
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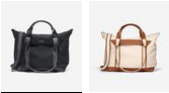
BEST SELLER



Essential Soft Tote Bag  
\$268.00



Triboro Sling Bag  
\$268.00



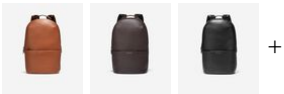
Total Tote  
~~\$388.00~~ **\$269.95**  
Extra 20% Off | Code SUMMER



Grand Ambition Small Convertible Luxe Backpack  
\$278.00



Grand Ambition Small Convertible Luxe Backpack  
\$278.00



Triboro Backpack  
~~\$348.00~~ \$279.95  
Extra 20% Off | Code SUMMER





Grand Ambition Side-Cinch Satchel

~~\$398.00~~ \$299.95



Grand Ambition Side-Cinch Satchel

~~\$398.00~~ \$319.95

Extra 20% Off | Code SUMMER



Grand Ambition Convertible Backpack

\$328.00



Mini Diamante Hobo Bag

\$328.00





BEST SELLER



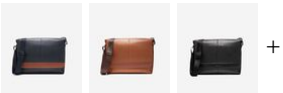
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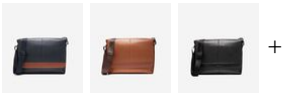
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Triboro Messenger  
\$358.00



Triboro Messenger  
\$358.00



Triboro Rucksack  
\$378.00



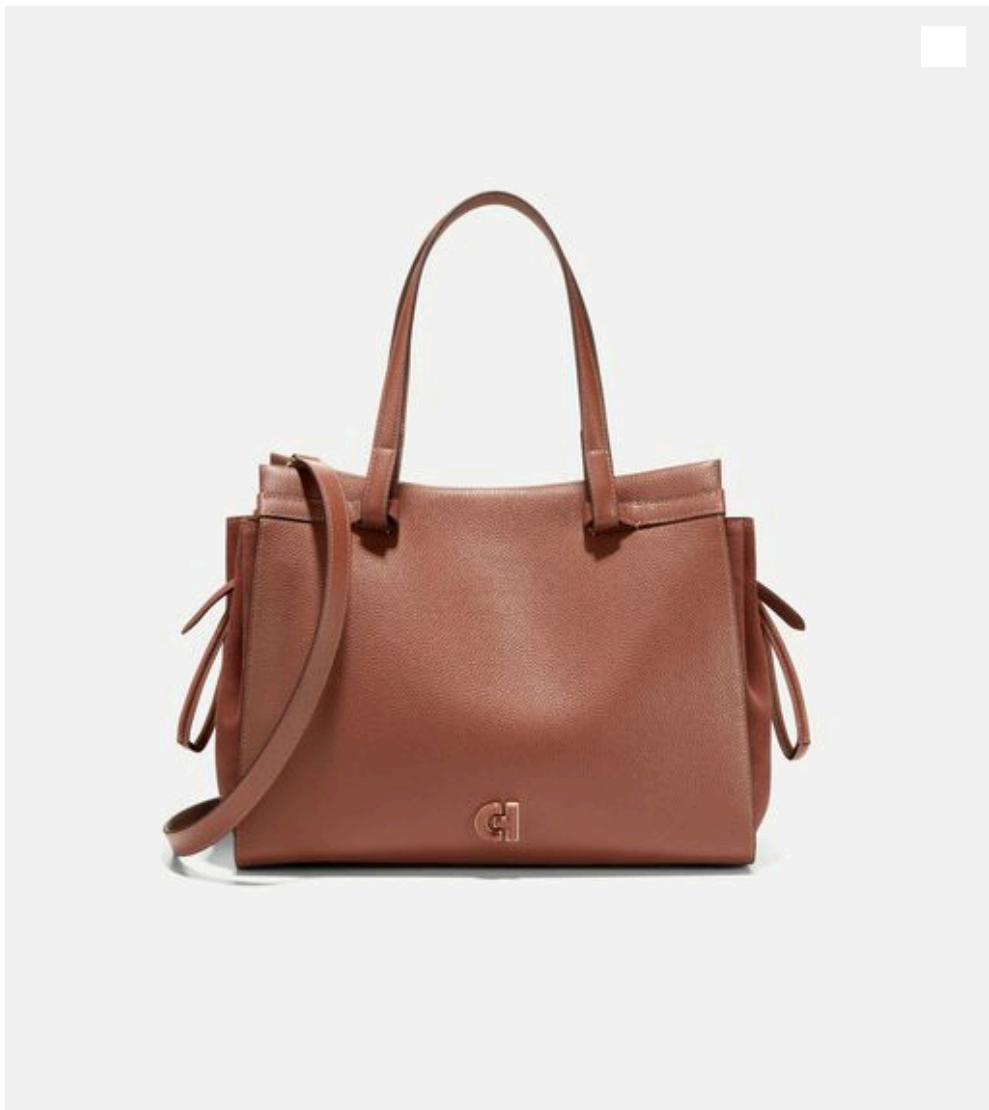
Triboro Rucksack  
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72-Hour Backpack  
\$398.00



72 Hour Backpack  
\$398.00





Grand Ambition Side-Cinch Satchel  
\$398.00

Triboro Tote  
\$400.00



Triboro Weekender Bag  
\$548.00

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